

READ AND STEVENS, INC.

IBLA 83-299

Decided August 15, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting bid for competitive oil and gas lease NM 55006.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases:  
Discretion to Lease

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

APPEARANCES: Charles B. Read, President, Read and Stevens, Inc.; Robert J. Uram, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Read and Stevens, Inc., appeals from the December 22, 1982, decision of the New Mexico State Office, Bureau of Land Management (BLM), which rejected its high bid for competitive oil and gas lease NM 55006. The BLM decision indicates that the Deputy Conservation Manager for Resource Evaluation, Minerals Management Service (MMS), Albuquerque, New Mexico, recommended rejection of this bid. MMS based its recommendation on a presale evaluation of the parcel and found that appellant's high bid of \$35 per acre was lower than that evaluation. The BLM decision refers to enclosed rejection data. <sup>1/</sup> In addition, after this appeal was filed, BLM forwarded a supporting memorandum to the Solicitor, who in turn forwarded it to the Board.

Appellant argues in the statement of reasons that it could not justify a higher bid in what it regarded as a speculative area, and lists factors influencing its analysis, among them the "poor quality of Morrow production

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<sup>1/</sup> This data was not included with the decision in the case record but was forwarded to the Board upon request.

in the area" and "the high cost of drilling." Appellant asserts that "[t]he leases were offered at competitive bid and fair market value has always been determined by what a willing buyer would pay for a property on a given date by competitive bidding." Appellant also suggests that if a prospective lease is to be subject to a minimum price, then BLM should state that minimum in its advertisements in order to eliminate unnecessary expenses for both BLM and prospective purchasers.

[1] The Secretary of the Interior has the discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent fair market value for the parcel. Harry Ptasynski, 48 IBLA 246 (1980). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases. Exxon Co. U.S.A., 15 IBLA 345, 357-58 (1974). The Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977).

At the time the bid was rejected MMS was the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a competitive oil and gas lease sale. <sup>2/</sup> The Secretary is entitled to rely on its reasoned analysis if a comprehensible explanation of it is in the record of BLM's decision. L. B. Blake, 67 IBLA 103 (1982); Gerald S. Ostrowski, 34 IBLA 254 (1978).

The rejection data included a recommendation for rejection of appellant's bid for parcel 37 which stated in part:

Parcel No. 37 is located in the vicinity of Morrow Gas production. A Morrow well was completed in April 1982, in section 25, approximately 3/4 mile south of parcel 37. Other Morrow wells are located 1-2 miles to the east of the parcel.

The Minerals Service's presale estimate of the value for this parcel was greater than the amount of the highest bid received. This presale estimate was obtained in the following manner:

1. A range of data values, utilizing Monte Carlo simulation techniques, was input into a discounted cash flow program, which computed 5000 present worth values for the parcel.
2. A mean present worth value was obtained for these 5000 computed present worth values.
3. A plot was made of present worth versus risk factor utilizing the mean present worth at a risk factor of zero and the dry hole cost at a risk factor of one. A risk factor was assigned and

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<sup>2/</sup> BLM is the successor to the onshore minerals functions of the MMS not relating to royalty management. 48 FR 8962 (Mar. 2, 1983).

the present worth at the assigned risk factor was obtained from the plot.

MMS then listed its input data values for parcel 37.

The Office of the Field Solicitor entered an appearance and forwarded a supporting memorandum prepared by BLM in response to this appeal, a copy of which was forwarded to appellant. This memorandum states:

The pre-sale analysis for this parcel is based on comparative sales and on engineering estimates of the potential for recoverable hydrocarbons. A parcel about one mile to the west of this tract sold for \$755.75 per acre in September 16, 1980. This parcel is located in the vicinity of deep Morrow production, at about 13,500 feet. Some of the nearby Morrow wells are very prolific, others look nominal. A discounted cash flow (DCF) was run based upon Morrow production from these wells. The estimated values used in the DCF were a decline rate between 20% and 26%, reserves between 200,000 Mcf and 2,500,000 Mcf, drilling costs between \$1,917,020 and \$2,343,024, annual operating costs between \$16,740 and \$20,460, and an average selling price between \$4.40 and \$7.31. Our estimate of the fair market value (FMV) of this tract reflects the market conditions at the time of the sale and the current estimated potential for recoverable hydrocarbons. We use published sources for our information and derivations using standard estimation techniques.

The memorandum continues with several comments on appellant's statement of reasons. BLM contends that the parcel is not a wildcat tract because it is near the Morrow trend and that although Morrow production in the area is uneven some of it is very productive. It states that trade literature indicates costs of drilling are declining. It reports that demand for oil and gas, lower lease bonuses, and market factors such as high interest rates are all included in the presale estimation of fair market value. It concludes that fair market value requires both a willing buyer and a willing seller and that although it does not have a minimum price for the parcel, it is unwilling to accept a bid below its presale evaluation. However, the presale evaluation was not included anywhere in the case record.

We have said before that we will not substitute our judgment for BLM's in these matters; but we have also said that what we require is "sufficient facts and a sufficiently comprehensible analysis to insure that a rational basis for the determination is present." M. Robert Paglee, 68 IBLA 231, 234 (1982). We have recently outlined some of the kinds of facts that may be relevant, depending on the circumstances of the particular case. Larry White, 72 IBLA 242, 247 (1983).

We require that the estimated fair market value be included among the facts provided. Edward L. Johnson, 73 IBLA 253 (1983); Amoco Production Co., 71 IBLA 241 (1983); Petrovest, Inc., 71 IBLA 250 (1983). We have found a postappeal memorandum which specified a presale acceptable minimum to be sufficient. Read & Stevens, 70 IBLA 377, 380 (1983). Although BLM provided a great deal of helpful data here, it did not provide the critical figure.

Here, unlike Blake, supra, we have merely a reference to the Monte Carlo simulation and the input data without either an explanation of the program or a report of the application of the program to the bids received. Here, too, we have first a reference to a well to the south, with no sale price given, and to "other Morrow wells" 1 to 2 miles to the east, with no further specifics given, and then later a reference to a parcel about a mile to the west, with a price given for a sale more than 2 years old.

Therefore, we remand this case to BLM for readjudication of appellant's bid. If the bid is rejected again, BLM shall set forth its reasons for doing so, including the presale evaluation, so the Board can properly consider it in the event of an appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is set aside and the case remanded for further consideration consistent with this opinion.

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Will A. Irwin  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

